All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E5 airspace extending upward from 700 feet above the surface at Albany Municipal Airport, Albany, OR. Controlled airspace would extend to within a 6.7-mile radius of the airport to accommodate IFR departures up to 1,200 feet above the surface; would include a small extension to the southwest to accommodate IFR arrivals below 1,500 feet above the surface; and a segment east of longitude 123° would be removed, as there are no IFR operations within that area. The FAA found these modifications necessary for the safety and management of IFR operations at the airport, while preserving the navigable airspace for aviation.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures

(44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

ANM OR E5 Albany, OR [Modified]

Albany Municipal Airport, OR
(Lat. 44°38′16″ N., Long. 123°03′34″ W.)

That airspace extending upward from 700 feet above the surface, within a 6.7-mile radius of Albany Municipal Airport, beginning at the 158° bearing from the airport clockwise to the 022° bearing, thence to the point of beginning, and that airspace 1.4 miles each side of the 230° bearing from the airport extending from the 6.7-mile radius to 8.5 miles southwest of the airport.

Issued in Seattle, Washington, on August 5, 2016.

Sam Shrimpton,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2016–19116 Filed 8–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

28 CFR Parts 0 and 44

[CRT Docket No. 130; AG Order No. 3726–2016]

RIN 1190–AA71

Standards and Procedures for the Enforcement of the Immigration and Nationality Act

AGENCY: Civil Rights Division, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Justice (Department) proposes to revise regulations implementing a section of the Immigration and Nationality Act concerning unfair immigration-related employment practices. The proposed revisions are appropriate to conform the regulations to the statutory text as amended, simplify and add definitions of statutory terms, update and clarify the procedures for filing and processing charges of discrimination, ensure effective investigations of unfair immigration-related employment practices, reflect developments in nondiscrimination jurisprudence, reflect changes in existing practices (*e.g.,* electronic filing of charges), reflect the new name of the office within the Department charged with enforcing this statute, and replace outdated references.

DATES: Comments must be submitted on or before September 14, 2016. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until midnight Eastern Time at the end of the day.

ADDRESSES: You may submit written comments, identified by Docket No. CRT 130, by ONE of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: 950 Pennsylvania Avenue NW—NYA, Suite 9000, Washington, DC 20530.

Hand Delivery/Courier: 1425 New York Avenue, Suite 9000, Washington, DC 20005.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. For additional details on submitting comments, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Alberto Ruisanchez, Deputy Special Counsel, Office of Special Counsel for Immigration-Related Unfair Employment Practices, Civil Rights Division, 950 Pennsylvania Avenue NW., Washington, DC 20530, (202) 616–5594 (voice) or (800) 237–2515 (TTY); or Office of Special Counsel for Immigration-Related Unfair Employment Practices, Civil Rights Division, 950 Pennsylvania Avenue NW., Washington, DC 20530, (202) 353–9338 (voice) or (800) 237–2515 (TTY).

SUPPLEMENTARY INFORMATION:

Executive Summary

The anti-discrimination provision of the Immigration and Nationality Act, section 274B, codified at 8 U.S.C. 1324b, was enacted by Congress as part of the Immigration Reform and Control Act of 1986, Public Law 99–603, to prohibit certain unfair immigration-related employment practices. Congress provided for the appointment of a Special Counsel for Immigration-Related Unfair Employment Practices (Special Counsel) to enforce this provision. Congress has amended 8 U.S.C. 1324b several times. On November 29, 1990, by section 535 of the Immigration Act of 1990, Public Law 101–649, Congress added a new subsection (a)(6) prohibiting certain unfair documentary practices during the employment eligibility verification process. *See* 8 U.S.C. 1324b(a)(6) (1994). On September 30, 1996, by section 421 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, div. C, Congress further amended that provision by providing that unfair documentary practices were unlawful only if done ''for the purpose or with the intent of discriminating against an individual in violation of'' 8 U.S.C. 1324b(a)(1). *See* 8 U.S.C. 1324b(a)(6) (2000). The set of regulations implementing section 1324b, 28 CFR part 44, has not been updated to reflect the statutory text as amended by IIRIRA. The proposed revisions apply to the Special Counsel's investigations and to cases adjudicated under section 1324b before the Department's Executive Office for Immigration Review, Office of the Chief Administrative Hearing Officer (OCAHO).

The proposed revisions to 28 CFR part 44 incorporate the intent requirement contained in the amended statute, and also change the regulatory provisions regarding the Special Counsel's investigation of unfair immigration-related employment practices. Specifically, the proposed revisions update the ways in which charges of discrimination can be filed, clarify the procedures for processing of such charges, and conform the regulations to the statutory text to clarify the timeframes within which the Special Counsel may file a complaint with OCAHO. The proposed revisions also simplify the definitions of certain statutory terms and define additional statutory terms to clarify the full extent of the prohibitions against unfair immigration-related employment practices and to eliminate ambiguities in the regulatory text. Additionally, the proposed revisions codify the Special Counsel's existing authority to seek and ensure the preservation of evidence during investigations of alleged unfair immigration-related employment practices. The proposed revisions also replace references to the former Immigration and Naturalization Service with references to the Department of Homeland Security (DHS), where applicable, in accordance with the Homeland Security Act of 2002, Public Law 107–296 (HSA).

Finally, the proposed revisions reflect the change in name of the office within the Department's Civil Rights Division that enforces the anti-discrimination provision, from the Office of Special Counsel for Immigration-Related Unfair Employment Practices to the Immigrant and Employee Rights Section.

Section-by-Section Summary

28 CFR Part 0

Section 0.53 Immigrant and Employee Rights Section

This proposed rule would amend this section to reflect the new name of the office through which the Special Counsel enforces the anti-discrimination provision. In 1997, the Department of Justice incorporated the Office of Special Counsel for Immigration-Related Unfair Employment Practices into the Civil Rights Division. 62 FR 23657 (May 1, 1997) (codified at 28 CFR 0.53). That office is now called the Immigrant and Employee Rights Section, headed by the Special Counsel, in the Civil Rights Division.

28 CFR Part 44

Subpart A—Purpose and Definitions

Section 44.100 Purpose

The proposed rule would amend this section to reflect the enactment of IIRIRA.

Section 44.101 Definitions of statutory terms and phrases

New paragraph (a) would contain a revised definition of the term ''charge.'' The proposed revisions would simplify this definition by eliminating information related to an alien's immigration status that is not required in determining whether the Special Counsel has jurisdiction to investigate an alleged unfair immigration-related employment practice. The proposed revised definition would ensure that a charge form could be treated as a filed charge even if the form was incomplete, as provided in 28 CFR 44.301, so long as it nonetheless provided sufficient information to determine the agency's jurisdiction. Further, the proposed revisions would codify the longstanding practice of accepting written statements in any language alleging an unfair immigration-related employment practice.

New paragraph (b) would contain a revised definition of the term ''charging party.'' The rule would replace the word ''individual'' with the term ''injured party,'' which is later defined, in order to simplify the regulatory text. It would also replace the term ''private organization'' with the term ''entity'' in order to make clear that the scope of entities that may file a charge on behalf of one or more injured parties is not limited to private organizations. In addition, it would clarify that the DHS may file charges alleging ongoing as well as past acts of unlawful employment discrimination. Finally, it

would change the phrase ''has been adversely affected'' to ''is adversely affected'' to more closely track the statutory language.

New paragraph (c) would define the term ''citizenship status.'' The proposed revisions add this term to the list of defined statutory terms to codify the definition of this term, consistent with the Special Counsel's longstanding guidance to the public. An individual's citizenship status connotes more than simply whether the individual is or is not a U.S. citizen, and encompasses as well a non-U.S. citizen's immigration status. For example, a refugee denied hire because of his or her refugee status could be a victim of unlawful discrimination. Relevant administrative decisions support the conclusion that an individual's citizenship status includes immigration status. *See, e.g., Kamal-Griffin* v. *Cahill Gordon & Reindel,* 3 OCAHO no. 568, 1641, 1647 (1993) (''Congress intended the term 'citizenship status' to refer both to alienage and to non-citizen status.'').

New paragraph (d) would contain a revised definition of ''complaint.'' The proposed revision would clarify that complaints must be filed with OCAHO and allege one or more unfair immigration-related employment practices, and would replace the reference to the former Immigration and Naturalization Service with the DHS, in accordance with the HSA.

New paragraph (e) would define the term ''discriminate,'' as that term is used in 8 U.S.C. 1324b. This proposed definition clarifies that discrimination means the act of intentionally treating an individual differently, regardless of the explanation for the discrimination, and regardless of whether it is because of animus or hostility. *See, e.g., United States* v. *Sw. Marine Corp.,* 3 OCAHO no. 429, 336, 359 (1992). Section 1324b is modeled after Title VII of the Civil Rights Act of 1964, and case law under that provision confirms that intentional discrimination does not require animus or hostility. *See Sodhi* v. *Maricopa Cty. Special Health Care Dist.,* 10 OCAHO no. 1127, 7–8 (2008) (''Because § 1324b was expressly modeled on Title VII of the Civil Rights Act of 1964 as amended . . . case law developed under that statute has long been held to be persuasive in interpreting § 1324b.''); *see also Int'l Union* v. *Johnson Controls, Inc.,* 499 U.S. 187, 199 (1991) (stating that, in the context of Title VII, ''absence of a malevolent motive does not convert a facially discriminatory policy into a neutral policy with a discriminatory effect. Whether an employment practice involves disparate treatment through explicit facial discrimination does not depend on why the employer discriminates but rather on the explicit terms of the discrimination.'').

New paragraph (f) would define the phrase ''for purposes of satisfying the requirements of section 1324a(b).'' This proposed definition incorporates the well-established construction of this statutory language to include all of an employer's efforts to verify an individual's employment eligibility. Thus, this definition includes not only the process related to completing the DHS Employment Eligibility Verification Form I–9, but also any other employment eligibility verification practices, such as the DHS electronic employment eligibility verification (E-Verify) process. *See, e.g., United States* v. *Mar-Jac Poultry, Inc.,* 10 OCAHO no. 1148, 11 (2012).

New paragraph (g) would define the phrase ''for the purpose or with the intent of discriminating against an individual in violation of paragraph (1),'' as that phrase is used in 8 U.S.C. 1324b(a)(6). This proposed definition clarifies that the act of intentionally treating an individual differently based on national origin or citizenship status is sufficient to demonstrate discriminatory intent regardless of the explanation for the discrimination, and regardless of whether it is based on animus or hostility. *See United States* v. *Life Generations Healthcare, LLC,* 11 OCAHO no. 1227, 22–23 (2014) (stating that the discriminatory intent inquiry under 8 U.S.C. 1324b(a)(6) involves ''ask[ing] the question whether the outcome would have been different if the groups had been reversed''). For instance, an employer's request that an individual present more or different documents than required under 8 U.S.C. 1324a(b) because of the individual's citizenship status or national origin constitutes intentional discrimination, even if the employer thought that requesting such documents would help the individual complete the Form I–9 faster or even if the employer was completely unaware of the prohibition against discrimination in the employment eligibility verification process. *See id.*

New paragraph (h) would define ''hiring.'' This proposed definition is intended to make clear that conduct during the entire hiring process, and not solely the employer's final hiring decision, may constitute an unfair immigration-related employment practice. This definition is consistent with the Special Counsel's longstanding interpretation and is well-established in relevant administrative decisions. *See, e.g., Mar-Jac Poultry, Inc.,* 10 OCAHO no. 1148 at 11; *Mid-Atlantic Reg'l Org. Coal.* v. *Heritage Landscape Servs., LLC,* 10 OCAHO no. 1134, 8 (2010).

New paragraph (i) would contain a revised and simplified definition of ''injured party.'' It would clarify that this term includes any person who claims to be adversely affected by an unfair immigration-related employment practice.

New paragraph (j) would define the statutory phrase ''more or different documents than are required under such section.'' In accordance with both the weight of OCAHO authority and the longstanding interpretation of the Special Counsel, this proposed definition provides that an employer's request that an individual present specific documents from the Form I–9 Lists of Acceptable Documents for employment eligibility verification purposes violates 8 U.S.C. 1324b(a)(6) where that request is made because of the individual's national origin or citizenship status. *See, e.g., United States* v. *Townsend Culinary, Inc.,* 8 OCAHO no. 1032, 454, 507 (1999); *United States* v. *Strano Farms,* 5 OCAHO no. 748, 206, 222–23 (1995); *United States* v. *Beverly Ctr.,* 5 OCAHO no. 762, 347, 351 (1995); *United States* v. *A.J. Bart, Inc.,* 3 OCAHO no. 538, 1374, 1387 (1993); *see also United States* v. *Zabala Vineyards,* 6 OCAHO no. 830, 72, 85–88 (1995) (holding, prior to the enactment of IIRIRA, that 8 U.S.C. 1324b(a)(6) did not prohibit an employer's request for specific documents ''in the absence of evidence that . . . aliens but not other new hires were required to rely on and produce specific documents''). To interpret the statute otherwise would allow employers to discriminate against an individual by imposing more restrictions on the documentation that an individual can show to establish identity and employment authorization than 8 U.S.C. 1324a(b) provides.

New paragraph (k) would contain a revised definition of ''protected individual.'' This proposed revision restructures the existing definition for the purpose of clarity, and replaces a reference to the former Immigration and Naturalization Service with the DHS, in accordance with the HSA.

New paragraph (l) would define ''recruitment and referral for a fee.'' This proposed definition is intended to make clear that conduct during the entire process of recruitment or referral for a fee, and not solely the employer's final recruitment or referral decision, may constitute an unfair immigration-related employment practice. This definition is consistent with the Special Counsel's longstanding interpretation and is well-established in relevant administrative

decisions. *See, e.g., Mid-Atl. Reg'l Org. Coal.,* 10 OCAHO no. 1134 at 8 (''The governing statute specifically applies to recruitment for employment as well as to hiring, and OCAHO cases have long held that it is the entire selection process, and not just the hiring decision alone, which must be considered in order to ensure that there are no unlawful barriers to opportunities for employment.'').

New paragraph (m) would contain a revised definition of ''respondent.'' This proposed revision is intended to clarify that an entity against whom the Special Counsel opens an investigation is considered a respondent, regardless of whether the investigation was initiated by a charge filed under 8 U.S.C. 1324b(b)(1) or the Special Counsel's independent statutory authority to investigate possible unfair immigration-related employment practices pursuant to 8 U.S.C. 1324b(d)(1).

New paragraph (n) would contain a revised definition of ''Special Counsel.'' This proposed revision makes clear that a duly authorized designee may act as the Special Counsel when the Special Counsel position is vacant.

Section 44.102 Computation of Time

Section 44.102 is added to provide clarification regarding the calculation of time periods specified in part 44.

Section 44.200 Unfair Immigration-Related Employment Practices

Paragraph (a) sets forth the three forms of prohibited unfair immigration-related employment practices: (1) Discrimination with respect to hiring, recruiting or referring for a fee, or discharging an individual; (2) intimidation or retaliation; and (3) unfair documentary practices. The proposed revisions would clarify specific parameters of conduct that constitute unfair documentary practices.

Paragraph (a)(3) sets forth the prohibition against unfair documentary practices. The proposed revisions would replace the term ''documentation abuses'' with ''unfair documentary practices'' to more clearly describe the prohibited conduct. Further, to conform to the statutory text, which was amended by section 421 of IIRIRA, these proposed revisions clarify that a showing of intentional discrimination is required to establish an unfair documentary practice under 8 U.S.C. 1324b(a)(6). Additionally, the proposed revisions would clarify, based on the plain language of the statutory text, that unfair documentary practices do not require a showing that the discriminatory documentary request was made as a condition of employment. Liability for unfair documentary practices should not depend on whether an individual can prove that the documentary request was made as a condition of employment. Furthermore, the statutory text describing unfair documentary practices does not include any language requiring rescission of an employment offer, discharge, or other economic harm to establish liability. *See Mar-Jac Poultry, Inc.,* 10 OCAHO no. 1148 at 11 (''[A]n 'injury' is not necessary to establish liability for document abuse.'' (quoting *United States* v. *Patrol & Guard Enters., Inc.,* 8 OCAHO no. 1040, 603, 625 (2000))); *Townsend Culinary, Inc.,* 8 OCAHO no. 1032, 454, 498–500 (finding pattern or practice of unfair documentary practices and assessing civil penalties for violations without requiring a showing of economic harm); *Robison Fruit Ranch, Inc.* v. *United States,* 147 F.3d 798, 802 (9th Cir. 1998) (request may be an unfair documentary practice even if individual was able to comply with the request). These revisions are consistent with the Special Counsel's longstanding interpretation of the statute.

Paragraph (b) sets forth three circumstances in which paragraph (a)(1) does not apply. The proposed revision would replace the reference to paragraph (a) with a reference to paragraph (a)(1) to conform the exceptions language to the statutory text.

Section 44.202 Counting Employees for Jurisdictional Purposes

This proposed section is newly added and would codify the existing process by which the Special Counsel determines whether the Special Counsel or the Equal Employment Opportunity Commission (EEOC) has jurisdiction over a claim of national origin discrimination under 8 U.S.C. 1324b(a)(1). This section makes clear that the Special Counsel's office will count all full-time and part-time employees employed on the date of the alleged discrimination to determine whether it has jurisdiction over an entity charged with national origin discrimination under 8 U.S.C. 1324b(a)(1). In assessing whether the EEOC might have primary jurisdiction over allegations of national origin discrimination, the Special Counsel will also rely on the method for calculating an entity's number of employees set forth in Title VII of the Civil Rights Act of 1964. *See* 42 U.S.C. 2000e(b). The Special Counsel will refer section 1324b(a)(1) national origin discrimination charges to the EEOC where an employer has 15 or more employees for each working day in each of 20 or more calendar weeks during the current or preceding calendar year. *Id.* If an employer does not meet this threshold, but employed more than three employees on the date of the alleged discrimination, the Special Counsel will investigate the charge.

Section 44.300 Filing a Charge

The proposed revision to paragraph (a) would replace a reference to the former Immigration and Naturalization Service with the DHS, in accordance with the HSA, and simplify the paragraph's structure.

Paragraph (b) would be revised to simplify the existing language and clarify that a charge is deemed to be filed on the date it is transmitted or delivered in instances in which it is filed by a method other than by mail.

Paragraph (c) would be revised to remove specific references to addresses, in order to avoid the need for future technical revisions; to codify the existing practice of accepting charge filings through means other than mail and courier delivery; and to account for new methods of charge filings in the future.

Paragraph (d) would be revised to be consistent with the statutory text. Section 1324b(b)(2) of title 8 of the United States Code prohibits the filing of a charge described in section 1324b(a)(1)(A) with the Special Counsel if a charge with respect to that practice based on the same set of facts has been filed with the EEOC under title VII of the Civil Rights Act of 1964, unless the charge is dismissed as being outside the scope of such title. Current paragraph (d) broadens this prohibition to exclude not only duplicative national origin claims under section 1324b(a)(1)(A) but also citizenship status claims under section 1324b(a)(1)(B) that are based on the same set of facts as an EEOC charge. The amendment would make this paragraph consistent with the statute by limiting this prohibition to only national origin charges filed with the Special Counsel under section 1324b(a)(1)(A).

Section 44.301 Receipt of Charge

This section would be substantially reorganized to eliminate ambiguities in the existing regulations regarding the process the Special Counsel follows when a charge is received. Paragraph (a) would be revised to clarify when the obligation is triggered under 8 U.S.C. 1324b(b)(1) to provide notice to the charging party and respondent of the Special Counsel's receipt of a charge.

Paragraph (b) would set forth the contents of the Special Counsel's

written notice to the charging party, replace a reference to the former Immigration and Naturalization Service with the DHS, in accordance with the HSA, and conform language regarding the charging party's time frame for filing a complaint to existing statutory text. *See* 8 U.S.C. 1324b(d)(2).

New paragraph (c) would be substantially similar to existing paragraph (e), which sets forth the contents of the Special Counsel's notice to the respondent.

New paragraph (d) would combine existing paragraphs (c)(1) and (d)(2) to more clearly state the process for handling inadequate submissions filed with the Special Counsel. This proposed revision also applies the methodology in revised § 44.300(b) to determine when an inadequate submission later deemed to be a charge is considered filed and when additional information provided pursuant to the Special Counsel's request in response to an inadequate submission is considered timely. While the statute requires that a charge be filed with the Special Counsel within 180 days of the alleged violation, *see* 8 U.S.C. 1324b(d)(3), the statute does not speak to the handling or processing of inadequate submissions. Existing regulations address inadequate submissions as a practical necessity to prevent the Special Counsel's office from investigating claims that clearly fall outside of its jurisdiction, while at the same time ensuring that timely-filed meritorious charges that may be missing some information can still be considered timely. The revisions to the current regulations aim to set forth more clearly and revise the procedures for handling inadequate submissions, including by retaining the 45-day grace period to allow a charging party to provide requested additional information consistent with the Special Counsel's long-standing practice. This grace period is consistent with the remedial purpose of section 1324b. *See United States* v. *Mesa Airlines,* 1 OCAHO no. 74, 461, 513 (1989) (recognizing the ''remedial purpose'' of section 1324b). That purpose would be frustrated, and meritorious claims would be foreclosed, if the Special Counsel imposed a harsh and rigid rule requiring dismissal of timely-filed charges that may allege a violation of section 1324b, but that do not set forth all the elements necessary to be deemed a complete charge.

New paragraph (e) would be substantially similar to existing paragraph (c)(2), with an additional revision to ensure consistency in the regulations on the determination of the filing date of an inadequate submission.

New paragraph (f) would be added to account for the referral of incomplete or complete charges to the Special Counsel by another government agency.

New paragraph (g) would be substantially similar to existing paragraph (d)(1), with an additional clarification regarding the dismissal of inadequate submissions, and the elimination of the term ''with prejudice.'' These proposed revisions would incorporate the standards set forth in administrative decisions for determining whether an incomplete or complete charge that is filed late should nonetheless be considered timely, including when a dismissed incomplete charge is resubmitted for consideration based on equitable reasons. It is well-established in relevant administrative decisions that the 180-day charge filing period is not a jurisdictional prerequisite, but is subject to waiver, estoppel, and equitable tolling. *See, e.g., Lardy* v. *United Airlines, Inc.,* 4 OCAHO no. 595, 31, 73 (1994); *Halim* v. *Accu-Labs Research, Inc.,* 3 OCAHO no. 474, 765, 779 (1992). While those equitable modifications of filing deadlines are sparingly applied, they may be available particularly where the failure to meet a deadline arose from circumstances beyond the charging party's control. *See, e.g., Sabol* v. *N. Mich. Univ.,* 9 OCAHO no. 1107, 4–5 (2004).

Section 44.302 Investigation

Paragraph (a) would be revised to describe more broadly the means by which the Special Counsel may undertake an investigation of possible unfair immigration-related employment practices, including the authority to solicit testimony as necessary.

New paragraph (b) would authorize the Special Counsel to require any person or other entity to present Forms I–9 for inspection. The Immigration and Nationality Act expressly provides the Special Counsel with authority to inspect Forms I–9. *See* 8 U.S.C. 1324a(b)(3).

New paragraph (c) would be substantially similar to existing paragraph (b), but would broaden the list of items that an entity or person must permit the Special Counsel to access.

New paragraph (d) would codify the preservation obligations of a respondent that is the subject of an investigation by the Special Counsel. Such obligations are necessary to ensure that the Special Counsel's right to access and examine evidence is preserved. *See id.* 1324b(f)(2). In addition, these obligations are reasonable and appropriate in light of the Special Counsel's authority to seek a subpoena requiring the production of relevant evidence. *Id.* Finally, since at least 2006, all entities subject to an investigation by the Special Counsel have been instructed in writing, at the outset of the investigation, to preserve relevant documents. These obligations are also consistent with ''litigation hold'' requirements under the Federal Rules of Civil Procedure. *See, e.g.,* Fed. R. Civ. P. 16(b)(3)(B)(iii), 26(b)(5)(B), 45(e)(2)(B).

Section 44.303 Determination

Paragraph (a) would be revised and simplified.

Paragraph (b) would be revised to more clearly set forth the time frame for the Special Counsel to issue letters of determination.

Paragraph (c) would be revised to replace a reference to the former Immigration and Naturalization Service with the DHS, in accordance with the HSA.

Paragraph (d) would be revised to clarify that the Special Counsel is not bound by the 90-day statutory time limit on filing a complaint that is applicable to individuals filing private actions. The only statutory time limit on the Special Counsel's authority to file a complaint based on a charge is contained in 8 U.S.C. 1324b(d)(3), entitled ''Time limitations on complaints,'' and states that ''[n]o complaint may be filed respecting any unfair immigration-related employment practice occurring more than 180 days prior to the date of the filing of the charge with the Special Counsel.'' The 90-day statutory time limit, in contrast, is contained in 8 U.S.C. 1324b(d)(2), entitled ''Private actions,'' and states that ''the person making the charge may (subject to paragraph (3)) file a complaint directly before such a judge within 90 days after the date of receipt of the notice.'' The ''Private actions'' provision makes clear that the Special Counsel has a right to ''investigate the charge or to bring a complaint . . . during such 90-day period.'' *Id.* Nothing in the statute explicitly states that the Special Counsel is subject to that 90-day limit, however, or prohibits the Special Counsel's office from continuing to investigate a charge or from filing its own complaint based on a charge even after the 90-day period for a charging party to file a private complaint has run.

Relevant administrative decisions interpreting section 1324b support the conclusion that the Special Counsel is not bound by the statutory time limits that are applicable to individuals filing private actions. *See, e.g., United States* v. *Agripac, Inc.,* 8 OCAHO no. 1028, 399, 404 (1999) (stating that section 1324b ''does not set out in terms any

particular time within which the Special Counsel must file a complaint before an administrative law judge''); *United States* v. *Gen. Dynamics Corp.,* 3 OCAHO no. 517, 1121, 1156 (1993) (''The statute contains no time limitations on the Special Counsel's authority to conduct independent investigations or to subsequently file complaints based on such investigations.''). The Special Counsel's position is also consistent with the Supreme Court's interpretation of a similar provision in Title VII of the 1964 Civil Rights Act. *See Occidental Life Ins. Co. of Calif.* v. *EEOC,* 432 U.S. 355, 361 (1977) (holding that the EEOC is not subject to a complaint-filing deadline where the statutory language does not explicitly contain such a deadline and the legislative history does not support it). Given that section 1324b is modeled after Title VII—with similar charge-filing procedures and virtually identical timetables—the Supreme Court's ruling on this issue is highly instructive. *See Sodhi,* 10 OCAHO no. 1127 at 7–8.

The Special Counsel's authority to file a complaint based on a charge is, however, subject to some time limits. Similar to the EEOC, the Special Counsel is bound by equitable limits on the filing of a complaint. *See EEOC* v. *Propak Logistics, Inc.,* 746 F.3d 145 (4th Cir. 2014). In addition, the Special Counsel must comply with the five-year statutory time limit in 28 U.S.C. 2462 for bringing actions to impose civil penalties.

Section 44.304 Special Counsel Acting on Own Initiative

Paragraph (a) sets forth the process for the Special Counsel to conduct an investigation on his or her own initiative. This paragraph would be revised to conform with the Special Counsel's existing practice of notifying a respondent by certified mail of an investigation opened under this paragraph. Comments addressing whether the use of certified mail is effective are encouraged. For commenters who believe another method is preferable (such as regular mail or regular mail with delivery tracking), comments explaining why another method is preferable are also encouraged.

Paragraph (b) would be revised to make the time frame for the Special Counsel to bring a complaint based on an investigation opened on the Special Counsel's own initiative pursuant to 8 U.S.C. 1324b(d)(1) and 28 CFR 44.304(a) consistent with the statutory text. The statutory text can be reasonably read to provide no time limit for the Special Counsel to file a complaint. *United States* v. *Fairfield Jersey, Inc.,* 9 OCAHO no. 1069, 5 (2001) (acknowledging the absence of a statutory time limitation for the filing of a complaint arising out of an independent investigation). The statute provides only that the Special Counsel's authority to file a complaint based on such investigations be ''subject to'' 8 U.S.C. 1324b(d)(3), which in turn specifies that ''[n]o complaint may be filed respecting any unfair immigration-related employment practice occurring more than 180 days prior to the date of the *filing of the charge* with the Special Counsel.'' 8 U.S.C. 1324b(d)(1), (3) (emphasis added). Where the Special Counsel is conducting an investigation on his or her own initiative, no ''charge'' has been filed. The most reasonable application of 8 U.S.C. 1324b(d)(3) in that circumstance, therefore, is that the Special Counsel may not file a complaint unless an investigation on the Special Counsel's own initiative pursuant to 8 U.S.C. 1324b(d)(1) was opened within 180 days of the last known act of discrimination, as the opening of the Special Counsel's investigation is the nearest equivalent to the filing of a charge. The current regulations require the Special Counsel to file a complaint ''where there is reasonable cause to believe that an unfair immigration-related employment practice has occurred within 180 days from the date of the *filing of the complaint.''* 28 CFR 44.304(a) (emphasis added). That requirement unnecessarily restricts the Special Counsel's enforcement authority and is not required by the language of the statute. While the Special Counsel and respondents have entered into stipulations to extend the complaint-filing date in circumstances when the Special Counsel requires more time to conduct an investigation under 8 U.S.C. 1324b(d)(1) or to facilitate settlement discussions, it is appropriate to revise the regulations to better accord with the statutory language. Similar to the EEOC, the Special Counsel is bound by equitable limits on the filing of a complaint. *Propak Logistics,* 746 F.3d 145. In addition, the Special Counsel must comply with the five-year statutory time limit for bringing actions to impose civil penalties. 28 U.S.C. 2462.

Section 44.305 Regional Offices

The proposed rule would amend this section to conform its language to 8 U.S.C. 1324b(c)(4).

Public Participation

Please note that all comments received are considered part of the public record and are made available for public inspection online at *http://www.regulations.gov.* The information made available includes personal identifying information (such as name and address) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name and address) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You also must locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.*

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. The docket file will be available for public inspection during normal business hours at 1425 New York Avenue, Suite 9000, Washington, DC 20005. Upon request, individuals who require assistance to review comments will be provided with appropriate aids such as readers or print magnifiers. If you wish to inspect the agency's public docket file in person, please see the **FOR FURTHER INFORMATION CONTACT** paragraph above to schedule an appointment.

Copies of this rule may be obtained in alternative formats (large print, Braille, audio tape, or disc), upon request, by calling DeJuana Grant at (202) 616–5594. TTY/TDD callers may dial toll-free (800) 237–2515 to obtain information or request materials in alternative formats.

Regulatory Procedures

Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

The rule has been drafted and reviewed in accordance with Executive

Order 12866 (Sept. 30, 1993), and Executive Order 13563 (Jan. 18, 2011). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits (while recognizing that some benefits and costs are difficult to quantify), reducing costs, harmonizing rules, and promoting flexibility.

Under Executive Order 12866, the Department must determine whether a regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive Order and Office of Management and Budget (OMB) review. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as any regulatory action that is likely to result in a rule ''that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The Department has determined that the proposed rule is not an economically significant regulatory action under section 3(f)(1) of Executive Order 12866 because the Department estimates that its annual economic impact will be a one-time, first-year-only cost of $12.3 million—far less than $100 million. The Department has quantified and monetized the costs of the proposed rule over a period of 10 years (2016 to 2025) to ensure that its estimate captures all major benefits and costs, but has determined that all quantifiable costs will only be incurred during the first year after the regulations are implemented. Because the Department was unable to quantify the benefits of the proposed rule due to data limitations, the benefits are described qualitatively. When summarizing the costs of specific provisions of the proposed rule, the Department presents the 10-year present value of the proposed rule requirements.

The Department considered the following factors when measuring the proposed rule's impact: (a) Employers familiarizing themselves with the rule, (b) employers reviewing and revising their employment eligibility verification policy, and (c) employers and employees viewing training webinars. The largest first-year cost is the cost employers would incur to review and revise their employment eligibility verification policies, which is $7,840,566. The next largest cost is the cost employers would incur to familiarize themselves with the rule, which is $4,448,548.

The economic analysis presented below covers all employers with four or more employees, consistent with the statute's requirement that a ''person or entity'' have more than three employees to fall within OSC's jurisdiction for citizenship status and national origin discrimination in hiring, firing, and recruitment or referral for a fee. 8 U.S.C. 1324(a)(2).

In the following sections, the Department first presents a subject-by-subject analysis of the costs of the proposed rule. The Department then presents the undiscounted 10-year total cost ($12.3 million) and a discussion of the expected benefits of the proposed rule. The costs are incurred entirely in the first year; thus, they are not discounted.

The Department did not identify any transfer payments associated with the provisions of the rule. Transfer payments, as defined by OMB Circular A–4, are ''monetary payments from one group to another that do not affect total resources available to society.'' OMB Circular A–4 at 38 (Sept. 17, 2003). Transfer payments are associated with a distributional effect but do not result in additional costs or benefits to society.

In the subject-by-subject analysis, the Department presents the labor and other costs for each provision of the proposed rule. Exhibit 1 displays the labor categories that are expected to experience an increase in level of effort (workload) due to the proposed rule. To estimate the cost, the Department multiplied each labor category's hourly compensation rate by the level of effort. The Department used wage rates from the Mean Hourly Wage Rate calculated by the Bureau of Labor Statistics.[1] Wage rates are adjusted using a loaded wage factor to reflect total compensation, which includes health and retirement benefits. The loaded wage factor was calculated as the ratio of average total compensation to average wages in 2014, which resulted in 1.43 for the private sector.[2] The Department then multiplied the loaded wage factor by each labor category's wage rate to calculate an hourly compensation rate.

EXHIBIT 1—CALCULATION OF HOURLY COMPENSATION RATES

Position	Average hourly wage [a]	Loaded wage factor [b]	Hourly compensation rate c = a × b
Human Resources Manager	$54.88	1.43	$78.4784
Attorney	64.17	.....	91.7631

[1] Bureau of Labor Statistics, May 2014 National Occupational Employment and Wage Estimates: United States (Mar. 25, 2015), *http://www.bls.gov/oes/current/oes_nat.htm.*

[2] The Department calculated average total compensation by taking the average of the cost of total compensation for all workers in December, September, June, and March of 2014 ((31.32 + 30.32 + 30.11 + 29.99)/4 = 30.44), and calculated average wages by taking the average of the cost of wages and salaries for those employees in each of those four months ((21.72 + 21.18 + 21.02 + 20.96)/4 = 21.22). *See* BLS, News Release, Employer Costs for Employee Compensation—December 2014, Table 5 (Mar. 11, 2015); BLS, News Release, Employer Costs for Employee Compensation—September 2014, Table 5 (Dec. 10, 2014); BLS, News Release, Employer Costs for Employee Compensation—June 2014, Table 5 (Sept. 10, 2014); BLS, News Release, Employer Costs for Employee Compensation—March 2014, Table 5 (June 11, 2014). (Each of these news releases is available at *http://www.bls.gov/schedule/archives/ecec_nr.htm.*) The Department then calculated the loaded wage factor by taking the ratio of average total compensation to average total wages (30.44/21.22 = 1.43).

1. Subject-by-Subject Analysis

a. Employers Familiarize Themselves With the Rule

During the first year of the rule, employers with a developed human resources practice would need to read and review the rule to learn about the new requirements. The Department determined that no costs would be incurred by employers to familiarize themselves with the rule in years two through ten because (1) the cost for an existing employer to familiarize itself with the rule if it delays doing so until a subsequent year is already incorporated into the first-year cost calculations; and (2) for employers that are newly created in years two through ten, the cost of familiarization is the same as exists under the current regulations and, therefore, there is no incremental cost.

Employers would incur labor cost to familiarize themselves with the new rule. To estimate the labor cost for this provision, the Department first estimated the number of employers that would need to familiarize themselves with the proposed rule by relying on the number of organizational members in the Council for Global Immigration (CGI) and the Society for Human Resource Management (SHRM).[3] The Department used the number of organizational members in these two organizations as a proxy for the number of employers with a developed human resources practice that can be expected to institutionalize the regulatory changes. The Department acknowledges the possible overlap between SHRM and CGI members. The Department's analysis model therefore likely overestimates, to some extent, the number of entities (and thus, the costs) by assuming that an entity is a member of either SHRM or CGI, but not both.

The Department then multiplied the estimated number of employers by the assumed number of human resources (HR) managers per employer, the time required to read and review the new rule, and the hourly compensation rate. The Department estimated this one-time cost to be $4,448,548.[4]

b. Employers Review and Revise Employment Eligibility Verification Policies

The proposed rule would require some employers to revise their employment eligibility verification policies. Although all U.S. employers must ensure that a Form I–9 is properly completed for each individual they hire for employment in the United States to verify the individual's identity and employment authorization in accordance with their obligations under 8 U.S.C. 1324a, only a subset of employers has detailed written policies addressing compliance with section 1324b. The Department assumed that these employers save their policies in an electronic format that can be readily modified. For the policy revisions, employers would complete a simple ''search-and-replace'' to update the agency's name and possibly replace the term ''documentation abuse(s)'' with ''unfair documentary practice(s).''

Only the very limited number of those employers that have detailed written employment eligibility policies would need to make additional modifications to their policies. The Department estimated costs only for those employers that have written employment eligibility verification policies and that would be expected to review their policies and make changes as needed. The time involved would depend on the changes employers need to make and how many sections of the policy would need to be modified.

Employers with policies for verifying employment eligibility (and possibly employers with hiring or termination policies, even if they lack policies for verifying employment eligibility) might conduct a front-to-back review of their policies to determine whether any additional changes are needed.

These changes and reviews would represent an upfront, one-time cost to employers. The Department estimates this cost as the sum of the cost of revising the policies by making word replacements; the cost, for some employers, of making additional changes beyond word replacements; and the cost of conducting a front-to-back review of the employment eligibility verification policies.

To estimate the labor cost for making word replacements to the employment verification policies, the Department first estimated the number of employers that would make these revisions because of the proposed rule by relying on the number of organizational members in the SHRM and CGI. The Department then multiplied the estimated number of employers by the assumed number of HR managers per employer, the time required to make the revisions, and the hourly compensation rate.[5] This calculation yields $1,112,137 in labor costs related to revising employment eligibility verification policies in the first year of the rule.

To estimate the additional cost to those employers making changes beyond word replacements in the first year of the proposed rule, the Department assumed that 5 percent of employers (*i.e.,* the number of organizational members in CGI and SHRM) would make these changes. The Department then multiplied the number of employers that would make these additional changes by the assumed number of HR managers per employer, the time required to make the changes, and the hourly compensation rate. This calculation yields $55,607 in labor costs in the first year of the rule.[6]

To estimate the cost of conducting a front-to-back review of the policies for verifying employment eligibility (or hiring and termination policies), the Department multiplied the number of employers (*i.e.,* the number of organizational members in CGI and SHRM) by the number of HR managers per employer, the time required for a review, and the hourly compensation rate. This calculation yields $6,672,822 in labor costs in the first year of the rule.[7]

[3] The Department obtained the number of individual and organizational members in CGI and the number of individual members of SHRM directly from these two organizations. Data on the number of organizational members of SHRM was not available. To estimate the number of organizational members in SHRM, the Department applied the same ratio of organizational members (230) to individual members (1,100) in CGI to the number of individual members in SHRM (270,000), which results in 56,455 organizational members (270,000 × 230/1,100). The Department added the number of organizational members in CGI (230) and SHRM (56,455) to estimate the number of organizational members in the analysis (56,685), which serves as a proxy for the number of employers that would need to take action because of the proposed rule.

[4] The Department estimated the cost of this review by multiplying the estimated number of employers (56,685) by the number of HR managers per employer (1), the time needed to read and review the rule (1 hour), and the hourly compensation rate ($78.4784). This calculation yields a labor cost of $4,448,548.

[5] To estimate the cost of making revisions, the Department multiplied the estimated number of employers (56,685) by the assumed number of HR managers per employer (1), the hourly compensation rate ($78.4784), and the time required to make the revisions (0.25 hours). This calculation results in a cost of $1,112,137.

[6] To estimate the cost of making changes beyond word replacements, the Department first calculated the number of employers that would make these changes. The Department obtained the number of employers that would make these additional changes by multiplying the number of employers (56,685) by the assumed percentage of employers that would make these additional changes (5%). This calculation yields the number 2,834.25. The Department then multiplied that number of employers (2,834.25) by the number of HR managers per employer (1), the hourly compensation rate ($78.4784), and the time required to make the changes (0.25 hours). This calculation results in a cost of $55,607.

[7] To estimate the cost of reviewing the policies, the Department assumed, out of an abundance of caution, that all of the employers affiliated with CGI or SHRM would dedicate one HR manager to conduct a front-to-back review of their policies.

In total, the one-time costs to employers to revise the policies for verifying employment eligibility by making word replacements, to make additional changes beyond word replacements in the case of some employers, and to conduct a front-to-back review of those policies, are estimated to be $7,840,566 during the first year of rule implementation.

c. Employers and Employees View Training Webinars

During the first year of implementation, as a part of the Department's ongoing educational webinar series, the Department expects to schedule three live, optional employer training webinars per month and one live, optional advocate/employee training webinar per month to assist employers, employees, attorneys, and advocates in understanding the changes resulting from the rule. These live one-hour training webinars would cover the full spectrum of employer obligations and employee rights under the statute. The Department also expects to create three one-hour recorded webinars: One for employers and their representatives and two for employees and their representatives (one in English and one in Spanish). The Department anticipates that participation will occur mostly through viewings of the one-hour recorded webinars. The recorded training webinars developed to explain the post-rule regulatory and statutory obligations and rights would eventually replace the Department's existing live webinars. Therefore, the Department has calculated these costs for employers, employees, and their representatives to be incurred in the first year when learning about the changes, whether through a live or recorded training webinar. Thereafter, newly-created employers would be viewing training webinars instead of (not in addition to) viewing current webinars, with no incremental costs incurred.

To estimate the cost to employers of viewing training webinars, the Department summed the labor costs for those viewing live webinars and the labor costs for those viewing recorded webinars. To estimate the number of employers viewing the live webinars, the Department used statistics on the average number of employer participants in live webinars. To estimate the number of employers viewing a recorded webinar, the Department used data on the number of viewings of the Department's educational videos pertaining to employer obligations under 8 U.S.C. 1324b that are posted on YouTube. Both estimates assume a 15-percent increase in participation following the implementation of the proposed rule.[8] The Department multiplied the number of employers expected to view a webinar (represented by their HR managers) by the hourly compensation rate, the time required to view a webinar, and the number of training webinars in the first year for both live and recorded webinars. The total one-time cost to employers for viewing live and recorded webinars is estimated to be $26,447.[9]

To estimate the cost to employees of viewing live training webinars, the Department used existing statistics on the average participation of employees. To estimate the cost to employees of viewing recorded webinars, the Department used the employer-to-employee ratio of participation for the live webinars and applied it to the number of views of the Department's educational videos on YouTube. Both estimates assume a 5-percent increase in participation following the implementation of the proposed rule.[10] These estimates are only related to the webinars recorded in English, since the Department does not expect an increase in the number of views of the Spanish webinars following the implementation of the rule. In the Department's experience, in many cases the live Spanish webinars that have been offered have been canceled due to low turnout. In other cases, the Spanish webinars proceeded but with a turnout of fewer than ten participants, who are typically employees. The Department multiplied the number of employees expected to view webinars (represented by their attorneys) by the hourly compensation rate, the time required to view a webinar, and the number of training webinars in the first year for both live and recorded webinars. The Department estimates a total and aggregate one-time cost of $1,835 for viewing live and recorded advocate/employee webinars.[11]

Accordingly, the total one-time cost to employers and employees of viewing live and recorded webinars would be $28,282.

d. Benefits of the Proposed Rule

The Department was not able to quantify the benefits of the proposed rule due to data limitations, such as an inability to calculate the amount of time employers would save from the proposed rule. Several benefits to society would result, however, from the proposed rule, including the following:

Helping employers understand the law more efficiently. The proposed regulatory changes would reduce the time and effort necessary for employers to understand their statutory obligations by incorporating well-established administrative decisions, the Department's long-standing positions, and statutory amendments into the regulations.

Accordingly, the Department multiplied the number of employers (56,685) by the assumed number of HR managers per employer (1), the hourly compensation rate ($78.4784), and the time required to review the policies (1.5 hours). This calculation results in a cost of $6,672,822.

[8] On average, 44.7 individuals participate in live webinars for employers. The Department assumed that there would be a 15-percent increase in the number of participants following the implementation of the proposed rule. Thus, the Department estimated costs for seven employers (*i.e.,* 15 percent of the 44.7 individuals) related to viewing the live webinar. On average, 567 individuals have viewed each of the educational YouTube videos. Thus, the Department estimated costs for 85 employers (*i.e.,* 15 percent of the 567 individuals) related to viewing the recorded webinar.

[9] The Department estimated the cost of viewing the live webinars by taking the product of the number of employer representatives (HR managers) viewing the live webinar (7), the hourly compensation rate ($78.4784), the number of webinars per year (36), and the time required to view the webinar (1 hour). This yielded a cost of $19,777. The Department then estimated the cost of viewing the recorded webinars by taking the product of the number of employer representatives (HR managers) viewing the recorded webinars (85), the hourly compensation rate ($78.4784), the number of webinars (1), and the time required to view the webinar (1 hour). This yielded a cost of $6,671. The total cost of viewing webinars was estimated by taking the sum of the cost of viewing live webinars and the cost of viewing recorded webinars, to obtain a total cost of $26,447.

[10] On average, 12 individuals participate in live webinars for employees. The Department assumed that there would be a 5-percent increase in individuals following the implementation of the proposed rule. Thus, the Department estimated costs for one employee (*i.e.,* 5 percent of the 12 individuals) related to viewing the live webinars. On average, 567 individuals viewed the educational YouTube videos. The Department assumed the same proportion of employees-to-employers viewing the live webinars (0.268 = 12/44.7) would view the recorded webinars. This number would translate to 152 employees or employee advocates viewing the educational YouTube videos. Thus, the Department estimated costs for 8 employees (*i.e.,* 5 percent of the 152 individuals) related to viewing the recorded webinar.

[11] The Department estimated the cost of viewing live webinars by taking the product of the number of employee representatives (captured by the attorney occupational category) viewing the live webinar (1), the hourly compensation rate ($91.7631), the number of webinars (12), and the time required to view the webinar (1 hour). This resulted in a cost of $1,101. The Department then estimated the cost of viewing recorded webinars by taking the product of the number of employee representatives, assumed to be an attorney, viewing the recorded webinar (8), the hourly compensation rate ($91.7631), the number of webinars (1), and the time required to view the webinar (1 hour). This resulted in a cost of $734. The total cost of viewing webinars was estimated by taking the sum of the cost of viewing live webinars and the cost of viewing recorded webinars, to obtain a total cost of $1,835.

Increasing public access to government services. The proposed regulatory changes would streamline the charge-filing process for individuals alleging discrimination.

Eliminating public confusion regarding two offices in the Federal Government with the same name. The proposed regulatory changes would reflect the change in the name of the office charged with enforcing 8 U.S.C. 1324b from the Office of Special Counsel for Immigration-Related Unfair Employment Practices to the Immigrant and Employee Rights Section, thereby eliminating delays in processing submissions that currently occur due to confusion associated with having two Offices of Special Counsel in the Federal Government.[12]

Regulatory Flexibility Act and Executive Order 13272 (Consideration of Small Entities)

The Regulatory Flexibility Act (RFA), 5 U.S.C. 603, and Executive Order 13272 (Aug. 13, 2002), require agencies to prepare a regulatory flexibility analysis of the anticipated impact of a regulation on small entities. The RFA provides that the agency is not required to prepare such an analysis if an agency head certifies, along with a statement providing the factual basis for such certification, that the regulation is not expected to have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). Based on the following analysis, the Attorney General certifies that this rule will not have a significant economic impact on a substantial number of small entities.

The Department's analysis focused on small businesses or nonprofits with 20 to 499 employees. The Department assumed that small businesses or nonprofits with fewer than 20 employees will not have a detailed written policy addressing compliance with 8 U.S.C. 1324b.

The Department assumed that, in total, 56,685 entities will be affected by the proposed rule. Of those 56,685 affected entities, the Department estimated that 28,343 entities would be small employers.[13] Dividing the affected population (28,343) by the total number of small businesses and non-profits (664,094), the Department estimates that 4.3 percent of small entities would be impacted by the proposed rule.[14]

The Department estimated the costs of (a) familiarizing staff with the new requirements in the rule, (b) reviewing and revising their employment eligibility verification policy, and (c) viewing a training webinar. The analysis focused on the first year of rule implementation, when all costs of the proposed rule are incurred. The Department estimates that the total one-year cost per small employer is $314.[15] The Department has determined that the yearly cost of $314 will not be a significant economic impact on any of the affected small entities. Therefore, the Department has certified that the proposed rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

These regulations contain no information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 8 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, this proposed rule does not include any Federal mandate that may result in excess of $100 million in expenditures by State, local, and tribal governments in the aggregate or by the private sector.

Executive Order 13132 (Federalism)

The agency has reviewed this proposed rule in accordance with Executive Order 13132 (Aug. 4, 1999), and has determined that it does not have ''federalism implications.'' This proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This proposed rule does not have tribal implications under Executive Order 13175 (Nov. 6, 2000) that would require a tribal summary impact statement. The proposed rule would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

[12] In addition to the Official of Special Counsel for Immigration Related Unfair Employment Practices established by 28 CFR 0.53, Congress has established an Office of Special Counsel charged with protecting employees, former employees, and applicants for employment from prohibited personnel practices, among other functions. *See* 5 U.S.C. 1211–1212.

[13] According to the SHRM Web site, approximately 50 percent of the organization's members work in organizations with fewer than 500 employees. *See* SHRM, About the Society for Human Resource Management, *http://www.shrm.org/about/pages/default.aspx.* Taking 50 percent of the total estimated number of members in SHRM and CGI (56,685) results in 28,343 small entities.

[14] The Department assumed that the total number of small businesses and non-profits is equal to the number of firms with 20 to 499 employees. Because the U.S. Census Bureau did not identify the number of firms with 20 to 499 employees in 2013, the most recent year for which data is available, the Department calculated the estimated number of firms with 20 to 499 employees in that year by calculating the number of establishments with 20 to 499 employees in 2013 and dividing it by the ratio of small establishments to small firms in 2012. To perform that calculation, the Department first determined the estimated number of firms with 20 to 99 employees in 2013 by (1) adding the number of establishments with 20 to 49 employees in 2013 and the number of establishments with 50 to 99 employees in 2013 (652,075 + 221,192 = 873,267); (2) dividing the number of establishments with 20 to 99 employees in 2012 by the number of firms with 20 to 99 employees in 2012 (687,272/494,170 = 1.39076); and (3) dividing the first number by the second (873,267/1.39076 = 627,906). The Department then determined the estimated number of firms with 100 to 499 employees in 2013 by (1) adding the number of establishments with 100 to 249 employees in 2013 and the number of establishments with 250 to 499 employees in 2013 (124,411 + 31,843 = 156,254); (2) dividing the number of establishments with 100 to 499 employees in 2012 by the number of firms with 100 to 499 employees in 2012 (360,207/83,423 = 4.3178); and (3) dividing the first number by the second (156,254/4.3178 = 36,188). Last, to determine the estimated number of firms with 20 to 499 employees in 2013, the Department added the estimated number of firms with 20 to 99 employees in 2013 and the estimated number of firms with 100 to 499 employees in 2013 (627,906 + 36,188 = 664,094). *See* U.S. Census Bureau, 2013 County Business Patterns (NAICS), *http://censtats.census.gov;* U.S. Census Bureau, 2012 Statistics of U.S. Businesses, Number of Firms, Number of Establishments, Employment, Annual Payroll, and Estimated Receipts by Enterprise Employment Size for the United States and States, Totals: 2012; *http://www.census.gov/econ/susb/historical_data.html.*

[15] The Department estimated a cost of $314 per small entity by taking the sum of the cost per small entity of each of the proposed changes to the rule. This includes the following costs: Familiarization with the rule ($78), revising employment eligibility verification policies by making word replacements ($20), making additional changes beyond word replacements ($20), conducting a front-to-back review of the employment eligibility verification policies ($118), and viewing the training webinar ($78).

Executive Order 13045 (Protection of Children)

This proposed rule is not a covered regulatory action under Executive Order 13045 (Apr. 21, 1997). The proposed rule would have no environmental health risk or safety risk that may disproportionately affect children.

Executive Order 12630 (Constitutionally Protected Property Rights)

This proposed rule does not have takings implications under Executive Order 12630 (Mar. 15, 1988). The proposed rule would not effect a taking or require dedications or exactions from owners of private property.

Executive Order 12988 (Civil Justice Reform Analysis)

This proposed rule was drafted and reviewed in accordance with Executive Order 12988 (Feb. 5, 1996), and will not unduly burden the Federal court system. Complaints respecting unfair immigration-related employment practices are heard in the first instance by the Department of Justice, Executive Office for Immigration Review, Office of the Chief Administrative Hearing Officer.

List of Subjects

28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, Whistleblowing.

28 CFR Part 44

Administrative practice and procedure, Equal employment opportunity, Immigration.

For the reasons stated in the preamble, the Attorney General proposes to revise 28 CFR parts 0 and 44 as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

■ 2. Section 0.53 is revised to read as follows:

§ 0.53 Immigrant and Employee Rights Section.

(a) The Immigrant and Employee Rights Section shall be headed by a Special Counsel for Immigration-Related Unfair Employment Practices (''Special Counsel''). The Special Counsel shall be appointed by the President for a term of four years, by and with the advice and consent of the Senate, pursuant to section 274B of the Immigration and Nationality Act (INA), 8 U.S.C. 1324b. The Immigrant and Employee Rights Section shall be part of the Civil Rights Division of the Department of Justice, and the Special Counsel shall report directly to the Assistant Attorney General, Civil Rights Division.

(b) In carrying out the Special Counsel's responsibilities under section 274B of the INA, the Special Counsel is authorized to:

(1) Investigate charges of unfair immigration-related employment practices filed with the Immigrant and Employee Rights Section and, when appropriate, file complaints with respect to those practices before specially designated administrative law judges within the Office of the Chief Administrative Hearing Officer, Executive Office for Immigration Review, U.S. Department of Justice;

(2) Intervene in proceedings involving complaints of unfair immigration-related employment practices that are brought directly before such administrative law judges by parties other than the Special Counsel;

(3) Conduct, on the Special Counsel's own initiative, investigations of unfair immigration-related employment practices and, where appropriate, file complaints with respect to those practices before such administrative law judges;

(4) Conduct, handle, and supervise litigation in U.S. District Courts for judicial enforcement of subpoenas or orders of administrative law judges regarding unfair immigration-related employment practices;

(5) Initiate, conduct, and oversee activities relating to the dissemination of information to employers, employees, and the general public concerning unfair immigration-related employment practices;

(6) Establish such regional offices as may be necessary, in accordance with regulations of the Attorney General;

(7) Perform such other functions as the Assistant Attorney General, Civil Rights Division may direct; and

(8) Delegate to any subordinate any of the authority, functions, or duties vested in the Special Counsel.

■ 3. Revise part 44 to read as follows:

PART 44—UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

Sec.

Authority: 8 U.S.C. 1103(a)(1), (g), 1324b.

§ 44.100 Purpose.

The purpose of this part is to implement section 274B of the Immigration and Nationality Act (8 U.S.C. 1324b), which prohibits certain unfair immigration-related employment practices.

§ 44.101 Definitions.

For purposes of 8 U.S.C. 1324b and this part:

(a) *Charge* means a written statement in any language that—

(1) Is made under oath or affirmation;

(2) Identifies the charging party's name, address, and telephone number;

(3) Identifies the injured party's name, address, and telephone number, if the charging party is not the injured party;

(4) Identifies the name and address of the person or other entity against whom the charge is being made;

(5) Includes a statement sufficient to describe the circumstances, place, and date of an alleged unfair immigration-related employment practice;

(6) Indicates whether the basis of the alleged unfair immigration-related employment practice is discrimination based on national origin, citizenship status, or both; or involves intimidation or retaliation; or involves unfair documentary practices;

(7) Indicates the citizenship status of the injured party;

(8) Indicates, if known, the number of individuals employed on the date of the alleged unfair immigration-related employment practice by the person or other entity against whom the charge is being made;

(9) Is signed by the charging party and, if the charging party is neither the injured party nor an officer of the Department of Homeland Security, indicates that the charging party has the authorization of the injured party to file the charge;

(10) Indicates whether a charge based on the same set of facts has been filed with the Equal Employment Opportunity Commission, and if so, the specific office and contact person (if known); and

(11) Authorizes the Special Counsel to reveal the identity of the injured or charging party when necessary to carry out the purposes of this part.

(b) *Charging party* means—

(1) An injured party who files a charge with the Special Counsel;

(2) An individual or entity authorized by an injured party to file a charge with the Special Counsel that alleges that the injured party is adversely affected directly by an unfair immigration-related employment practice; or

(3) An officer of the Department of Homeland Security who files a charge with the Special Counsel that alleges that an unfair immigration-related employment practice has occurred or is occurring.

(c) *Citizenship status* means an individual's status as a U.S. citizen or national, or non-U.S. citizen, including the immigration status of a non-U.S. citizen.

(d) *Complaint* means a written submission filed with the Office of the Chief Administrative Hearing Officer (OCAHO) under 28 CFR part 68 by the Special Counsel or by a charging party, other than an officer of the Department of Homeland Security, alleging one or more unfair immigration-related employment practices under 8 U.S.C. 1324b.

(e) *Discriminate* as that term is used in 8 U.S.C. 1324b means the act of intentionally treating an individual differently from other individuals, regardless of the explanation for the differential treatment, and regardless of whether such treatment is because of animus or hostility.

(f) The phrase ''for purposes of satisfying the requirements of section 1324a(b),'' as that phrase is used in 8 U.S.C. 1324b(a)(6), means for the purpose of completing the employment eligibility verification form designated in 8 CFR 274a.2, or for the purpose of making any other efforts to verify an individual's employment eligibility, including the use of ''E-Verify'' or any other electronic employment eligibility verification program.

(g) An act done ''for the purpose or with the intent of discriminating against an individual in violation of paragraph (1),'' as that phrase is used in 8 U.S.C. 1324b(a)(6), means an act of intentionally treating an individual differently based on national origin or citizenship status in violation of 8 U.S.C. 1324b(a)(1), regardless of the explanation for the differential treatment, and regardless of whether such treatment is because of animus or hostility.

(h) *Hiring* means all conduct and acts during the entire recruitment, selection, and onboarding process undertaken to make an individual an employee.

(i) *Injured party* means an individual who claims to be adversely affected directly by an unfair immigration-related employment practice.

(j) The phrase ''more or different documents than are required under such section,'' as that phrase is used in 8 U.S.C. 1324b(a)(6), includes any limitation on an individual's choice of acceptable documentation to present to satisfy the requirements of 8 U.S.C. 1324a(b).

(k) *Protected individual* means an individual who—

(1) Is a citizen or national of the United States;

(2) Is an alien who is lawfully admitted for permanent residence, other than an alien who—

(i) Fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization, or, if later, within six months after November 6, 1986; or

(ii) Has applied on a timely basis, but has not been naturalized as a citizen within two years after the date of the application, unless the alien can establish that he or she is actively pursuing naturalization, except that time consumed in the Department of Homeland Security's processing of the application shall not be counted toward the two-year period;

(3) Is an alien lawfully admitted for temporary residence under 8 U.S.C. 1160(a) or 8 U.S.C. 1255a(a)(1);

(4) Is admitted as a refugee under 8 U.S.C. 1157; or

(5) Is granted asylum under 8 U.S.C. 1158.

(l) *Recruitment or referral for a fee* has the meaning given the terms ''recruit for a fee'' and ''refer for a fee,'' respectively, in 8 CFR 274a.1, and includes all conduct and acts during the entire recruitment or referral process.

(m) *Respondent* means a person or other entity who is under investigation by the Special Counsel, as identified in the written notice required by § 44.301(a) or § 44.304(a).

(n) *Special Counsel* means the Special Counsel for Immigration-Related Unfair Employment Practices appointed by the President under 8 U.S.C. 1324b, or a duly authorized designee.

§ 44.102 Computation of time.

When a time period specified in this part ends on a day when the Federal Government in Washington, DC is closed (such as on weekends and Federal holidays, or due to a closure for all or part of a business day), the time period shall be extended until the next full day that the Federal Government in Washington, DC is open.

§ 44.200 Unfair immigration-related employment practices.

(a)(1) *General.* It is an unfair immigration-related employment practice under 8 U.S.C. 1324b(a)(1) for a person or other entity to intentionally discriminate or to engage in a pattern or practice of intentional discrimination against any individual (other than an unauthorized alien) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—

(i) Because of such individual's national origin; or

(ii) In the case of a protected individual, as defined in § 44.101(k), because of such individual's citizenship status.

(2) *Intimidation or retaliation.* It is an unfair immigration-related employment practice under 8 U.S.C. 1324b(a)(5) for a person or other entity to intimidate, threaten, coerce, or retaliate against any individual for the purpose of interfering with any right or privilege secured under 8 U.S.C. 1324b or because the individual intends to file or has filed a charge or a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under that section.

(3) *Unfair documentary practices.* It is an unfair immigration-related employment practice under 8 U.S.C. 1324b(a)(6) for—

(i) A person or other entity, for purposes of satisfying the requirements of 8 U.S.C. 1324a(b), either—

(A) To request more or different documents than are required under § 1324a(b); or

(B) To refuse to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual; and

(ii) To make such request or refusal for the purpose or with the intent of discriminating against any individual in violation of paragraph (1), regardless of whether such documentary practice is a condition of employment or causes economic harm to the individual.

(b) *Exceptions.* (1) Paragraph (a)(1) of this section shall not apply to—

(i) A person or other entity that employs three or fewer employees;

(ii) Discrimination because of an individual's national origin by a person or other entity if such discrimination is covered by 42 U.S.C. 2000e–2; or

(iii) Discrimination because of citizenship status which—

(A) Is otherwise required in order to comply with law, regulation, or Executive order; or

(B) Is required by Federal, State, or local government contract; or

(C) The Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government.

(2) Notwithstanding any other provision of this part, it is not an unfair immigration-related employment practice for a person or other entity to prefer to hire an individual, or to recruit or refer for a fee an individual, who is a citizen or national of the United States over another individual who is an alien if the two individuals are equally qualified.

§ 44.201 [Reserved].

§ 44.202 Counting employees for jurisdictional purposes.

The Special Counsel will calculate the number of employees referred to in § 44.200(b)(1)(i) by counting all part-time and full-time employees employed on the date that the alleged discrimination occurred. The Special Counsel will use the 20 calendar week requirement contained in Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e(b), for purposes of determining whether the exception of § 44.200(b)(1)(ii) applies, and will refer to the Equal Employment Opportunity Commission charges of national origin discrimination that the Special Counsel determines are covered by 42 U.S.C. 2000e–2.

§ 44.300 Filing a charge.

(a) Who may file. Charges may be filed by:

(1) Any injured party;

(2) Any individual or entity authorized by an injured party to file a charge with the Special Counsel alleging that the injured party is adversely affected directly by an unfair immigration-related employment practice; or

(3) Any officer of the Department of Homeland Security who alleges that an unfair immigration-related employment practice has occurred or is occurring.

(b) Charges shall be filed within 180 days of the alleged occurrence of an unfair immigration-related employment practice. A charge is deemed to be filed on the date it is postmarked or the date on which the charging party otherwise delivers or transmits the charge to the Special Counsel.

(c) Charges may be sent by:

(1) U.S. mail;

(2) Courier service;

(3) Electronic or online submission; or

(4) Facsimile.

(d) No charge may be filed respecting an unfair immigration-related employment practice described in § 44.200(a)(1)(i) if a charge with respect to that practice based on the same set of facts has been filed with the Equal Employment Opportunity Commission under title VII of the Civil Rights Act of 1964, unless the charge is dismissed as being outside the scope of such title. No charge respecting an employment practice may be filed with the Equal Employment Opportunity Commission under such title if a charge with respect to such practice based on the same set of facts has been filed under this section, unless the charge is dismissed as being outside the scope of this part.

§ 44.301 Receipt of charge.

(a) Within 10 days of receipt of a charge, the Special Counsel shall notify the charging party and respondent by certified mail, in accordance with paragraphs (b) and (c) of this section, of the Special Counsel's receipt of the charge.

(b) The notice to the charging party shall specify the date on which the charge was received; state that the charging party, other than an officer of the Department of Homeland Security, may file a complaint before an administrative law judge if the Special Counsel does not do so within 120 days of receipt of the charge; and state that the charging party will have 90 days from the receipt of the letter of determination issued pursuant to § 44.303(b) by which to file such a complaint.

(c) The notice to the respondent shall include the date, place, and circumstances of the alleged unfair immigration-related employment practice.

(d)(1) If a charging party's submission is found to be inadequate to constitute a complete charge as defined in § 44.101(a), the Special Counsel shall notify the charging party that the charge is incomplete and specify what additional information is needed.

(2) An incomplete charge that is later deemed to be complete under this paragraph is deemed filed on the date the initial but inadequate submission is postmarked or otherwise delivered or transmitted to the Special Counsel, provided any additional information requested by the Special Counsel pursuant to this paragraph is postmarked or otherwise provided, delivered or transmitted to the Special Counsel within 180 days of the alleged occurrence of an unfair immigration-related employment practice or within 45 days of the date on which the charging party received the Special Counsel's request for additional information, whichever is later.

(3) Once the Special Counsel determines adequate information has been submitted to constitute a complete charge, the Special Counsel shall issue the notices required by paragraphs (b) and (c) of this section within 10 days.

(e) In the Special Counsel's discretion, the Special Counsel may deem a submission to be a complete charge even though it is inadequate to constitute a charge as defined in § 44.101(a). The Special Counsel may then obtain the additional information specified in § 44.101(a) in the course of investigating the charge.

(f) A charge or an inadequate submission referred to the Special Counsel by a federal, state, or local government agency appointed as an agent for accepting charges on behalf of the Special Counsel is deemed filed on the date the charge or inadequate submission was postmarked to or otherwise delivered or transmitted to that agency. Upon receipt of the referred charge or inadequate submission, the Special Counsel shall follow the applicable notification procedures for the receipt of a charge or inadequate submission set forth in this section.

(g) The Special Counsel shall dismiss a charge or inadequate submission that is filed more than 180 days after the alleged occurrence of an unfair immigration-related employment practice, unless the Special Counsel determines that the principles of waiver, estoppel, or equitable tolling apply.

§ 44.302 Investigation.

(a) The Special Counsel may seek information, request documents and answers to written interrogatories, inspect premises, and solicit testimony as the Special Counsel believes is necessary to ascertain compliance with this part.

(b) The Special Counsel may require any person or other entity to present Employment Eligibility Verification Forms (''Forms I–9'') for inspection.

(c) The Special Counsel shall have reasonable access to examine the evidence of any person or other entity being investigated. The respondent shall permit access by the Special Counsel during normal business hours to such books, records, accounts, papers, electronic and digital documents, databases, systems of records, witnesses, premises, and other sources of information the Special Counsel may deem pertinent to ascertain compliance with this part.

(d) A respondent, upon receiving notice by the Special Counsel that it is under investigation, shall preserve all evidence, information, and documents potentially relevant to any alleged unfair immigration-related employment practices, and shall suspend routine or

automatic deletion of all such evidence, information, and documents.

§ 44.303 Determination.

(a) Within 120 days of the receipt of a charge, the Special Counsel shall undertake an investigation of the charge and determine whether to file a complaint with respect to the charge.

(b) If the Special Counsel determines not to file a complaint with respect to such charge by the end of the 120-day period, or decides to continue the investigation of the charge beyond the 120-day period, the Special Counsel shall, by the end of the 120-day period, issue letters to the charging party and respondent by certified mail notifying both parties of the Special Counsel's determination.

(c) When a charging party receives a letter of determination issued pursuant to paragraph (b) of this section, the charging party, other than an officer of the Department of Homeland Security, may file a complaint directly before an administrative law judge in the Office of the Chief Administrative Hearing Officer (OCAHO) within 90 days after his or her receipt of the Special Counsel's letter of determination. The charging party's complaint must be filed with OCAHO as provided in 28 CFR part 68.

(d) The Special Counsel's failure to file a complaint with respect to such charge with OCAHO within the 120-day period shall not affect the right of the Special Counsel to continue to investigate the charge or later to bring a complaint before OCAHO.

(e) The Special Counsel may seek to intervene at any time in any proceeding brought by a charging party before OCAHO.

§ 44.304 Special Counsel acting on own initiative.

(a) The Special Counsel may, on the Special Counsel's own initiative, conduct investigations respecting unfair immigration-related employment practices when there is reason to believe that a person or other entity has engaged or is engaging in such practices, and shall notify a respondent by certified mail of the commencement of the investigation.

(b) The Special Counsel may file a complaint with OCAHO when there is reasonable cause to believe that an unfair immigration-related employment practice has occurred no more than 180 days prior to the date on which the Special Counsel opened an investigation of that practice.

§ 44.305 Regional offices.

The Special Counsel, in accordance with regulations of the Attorney General, shall establish such regional offices as may be necessary to carry out the Special Counsel's duties.

Dated: August 4, 2016.

Loretta E. Lynch,

Attorney General.

[FR Doc. 2016–18957 Filed 8–12–16; 8:45 am]

BILLING CODE 4410–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2012–0865; A–1–FRL–9950–59–Region 1]

Air Plan Approval; NH; Control of Volatile Organic Compound Emissions From Minor Core Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire on October 4, 2012. The revision clarifies Reasonably Available Control Technology (RACT) requirements as they apply to minor core activities of volatile organic compound (VOC) sources. The intended effect of this action is to propose approval of these requirements into the New Hampshire SIP. This action is being taken in accordance with the Clean Air Act.

DATES: Written comments must be received on or before September 14, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2012–0865 at *http://www.regulations.gov,* or via email to *Mackintosh.David@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the ''For Further Information Contact'' section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: David L. Mackintosh, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912, tel. 617–918–1584, fax 617–918–0668, email *Mackintosh.David@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: August 1, 2016.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2016–19125 Filed 8–12–16; 8:45 am]

BILLING CODE 6560–50–P